IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 673

MARTHA CARDONA,

Appellant,

against

JAMES M. POWER, THOMAS MALLEE, MAURICE J. O'ROURKE and JOHN R. CREWS, Members of and constituting the Board of Elections of the City of New York,

Appellees,

and

LOUIS J. LEFKOWITZ, as Attorney General of the State of New York,

Intervenor-Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

MOTION TO DISMISS OR AFFIRM

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Intervenor-Appellee Pro Se
80 Centre Street
New York, New York 10013

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

GEORGE C. MANTZOROS
BARRY J. LIPSON
Assistant Attorneys General

BRENDA SOLOFF
Deputy Assistant Attorney General
of Counsel

249 Press of Fremont Payne, Inc., 80 Washington St., N. Y.—BOwling Green 9-8153

INDEX

CASES

CONSTITUTIONS, TREATIES AND STATUTES

MISCELLANEOUS

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 673

MARTHA CARDONA,

Appellant,

against

JAMES M. POWER, THOMAS MALLEE, MAURICE J. O'ROURKE and JOHN R. CREWS, Members of and constituting the Board of Elections of the City of New York,

Appellees.

and

LOUIS J. LEFKOWITZ, as Attorney General of the State of New York,

Intervenor-Appellee

MOTION TO DISMISS OR AFFIRM

Intervenor-appellee, Louis J. Lefkowitz, Attorney General of the State of New York, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, moves that the final judgment of the Court of Appeals of New York State, as amended, be affirmed or, in the alternative, that this appeal be dismissed.

Opinions Below

The opinions of the New York State Court of Appeals dated May 27, 1965 are reported at 16 N. Y. 2d 639. The decisions amending the remittitur are reported at 16 N. Y. 2d 708 and at 16 N. Y. 2d 827.

Jurisdiction

Appellant invokes the jurisdiction of this Court under United States Code, Title 28, § 1257(2)

Questions Presented

1. May the State of New York, in the exercise of its power to establish qualifications for voters, require prospective voters to demonstrate literacy in the English language?

2. Has the instant appeal become moot by virtue of Section 4(e) of the Voting Rights Act of 1965?

Statutes Involved

New York State Constitution, Article II, § 1 (Appellant's Appendix D); New York State Election Law, Sections 150, 155, 168 and 201 (Appellant's Appendix D).

Voting Rights Act of 1965, § 4(e) (*infra*, pp. 11-12); United States Constitution, Article IV, Sections 2, 4, Article VI, Section 2; Amendments V, XIV and XV.

Statement

Appellant alleges, *inter alia*, that she was born in Puerto Rico in 1923, that she attended school there for an unspecified number of years, that the classes attended were taught

in the Spanish language, that she can read and write Spanish but cannot read and write English and that she has resided in New York City since 1948. On July 23, 1963, appellant appeared before the Board of Elections of the City of New York and presented proof of her age, citizenship and residence. The Board of Elections, pursuant to statutory requirements, offered to her the literacy test in English. But she demanded a test in Spanish. In the absence of such a test in the Spanish language, and in the face of her refusal to take a test in English, the Board could not and did not enroll appellant as a voter.

Appellant then commenced a proceeding in Supreme Court, New York County, pursuant to Article 78 of the New York Civil Practice Law and Rules, for an order directing the New York City Board of Elections to register her as a duly qualified voter or, in the alternative, directing the Board to subject her to a literacy test in the Spanish language and, upon her passing such a test, to register her as a duly qualified voter. She contended that Article II, Section 1 of the New York State Constitution and Sections 150, 168 and 201(1) of the New York Election Law, were discriminatory and therefore unconstitutional because they provided that "after January 1, 1922, no person shall become entitled to vote * * * unless such person is also able, except for physical disability to read and write English".

The application was denied and the petition dismissed on March 12, 1964 (GREENBERG, J.) on the authority of *Camacho* v. *Doe*, 31 Misc. 2d 692, 221 N. Y. Supp. 2d 262 (Sup. Ct. Bronx Co. 1958), aff'd 7 N. Y. 2d 762, 163 N. E. 2d 140 (1959); *Camacho* v. *Rogers*, 199 F. Supp. 155 (S.D.N.Y. 1961) and *Lassiter* v. *Northampton County Board of Elections*, 360 U. S. 45 (1959). On direct appeal to the New York Court of Appeals, the decision was affirmed on May 27, 1965 (16 N. Y. 2d 639). The remittitur was amended to show that questions under the Fifth,

Fourteenth and Fifteenth Amendments had been passed upon (16 N. Y. 2d 708) and to show that questions under Article IV, §§ 2 and 4, and Article VI, § 2, had been passed upon (16 N. Y. 2d 827).

Appellant attempts to circumvent the clear holding of *Lassiter* by attacking the legislative scheme in which the New York literacy provision is contained and by claiming the protection of certain treaties and statutes. Significantly, several challenges repeated here were advanced by the same counsel and rejected by the three-judge court in *Camacho* v. *Rogers, supra,* without appeal to this Court. Thus, it is argued that, because the English literacy requirement was passed to commence on a certain date, it is, in effect, a "grandfather clause"; that alleged exceptions in favor of veterans and their dependents voids the entire legislative scheme; and that the constitutional and statutory provisions bear no reasonable relation to voter qualifications.

Appellant also argues that she has been deprived of the privilege and immunities guaranteed her as a citizen; that English literacy requirements insofar as they apply to Puerto Rican-born citizens are an unlawful discrimination based upon race and that the English literacy requirements insofar as they apply to Puerto Rican-born citizens violate the Treaty of Paris of 1898 and subsequent statutes pursuant to which Puerto Ricans are citizens of the United States, and also violate the Constitution of Puerto Rico and the United Nations Charter.

It is appellee's position that *Lassiter* v. *Northampton County Board of Elections, supra,* is dispositive of the instant case, and that none of the numerous grounds for attack presented by appellant adds any substance to a question which no longer has substance.

ARGUMENT

Appellant's attack on New York State's requirement that a person be English-literate in order to vote does not raise a substantial federal question.

The New York Constitution, Article II, § 1, provides, *inter alia*, that:

> "Notwithstanding the foregoing provisions, after January first, nineteen hundred twenty-two, no person shall become entitled to vote by attaining majority, by naturalization or otherwise, unless such person is also able, except for physical disability, to read and write English."

Section 150 of the New York Election Law is to the same effect. Section 168 of the Election Law provides that literacy is to be determined either by examination, by proof that the applicant is an honorably discharged veteran, by the production of a certificate or diploma showing the completion of the work of six grades of an approved elementary school, or higher school in which English is the language of instruction, by the production of a certificate or diploma showing the completion of six grades in a school accredited by the Commonwealth of Puerto Rico in which English is predominantly the language of instruction, by a university matriculation card, by naturalization after June 27, 1952, or by affidavit attesting to any of the above. Veterans in veterans' hospitals may take an oath that they are qualified to vote, meeting each of the several qualifications and their signature is conclusive proof of literacy (Election Law, § 155[5]). If the voter is unable to sign, the board of elections members administering the oath may certify the nature of his inability (§ 155[3]) and such certification is conclusive proof of literacy (§ 155[5]). Since one of the prerequisites for voting is literacy, the oath obviously must include that fact. Only the nature of the

evidence of literacy is different from that for civilian voters (Cf. § 168). Indeed, for any person becoming eligible to vote after January 1, 1922 the nature of his inability to read or write must be such that but for that inability he would be literate. See Election Law §§ 168(3), 169.

In *Lassiter* v. *Northampton County Board of Elections*, 360 U. S. 45 (1959), this Court upheld that portion of Section 4 of Article VI of the North Carolina Constitution providing:

> "Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language" (360 U. S. at 47).

In discussing the scope of the of the states' rights to set voter qualifications, this Court held (360 U. S. at 51-53):

> "The ability to read and write likewise has some relation to standards designed to promote intelligent use of the ballot. Literacy and illiteracy are neutral on race, creed, color and sex, as reports around the world show. Literacy and intelligence are obviously not synonymous. Illiterate people may be intelligent voters. Yet in our society where newspapers, periodicals, books, and other printed matter canvass and debate campaign issues, a State might conclude that only those who are literate should exercise the franchise. Cf. *Franklin* v. *Harper*, 205 Ga. 779, 55 S. E. 2d 221, appeal dismissed 339 U. S. 946. It was said last century in Massachusetts that a literacy test was designed to insure an 'independent and intelligent' exercise of the right of suffrage. *Stone* v. *Smith*, 159 Mass. 413, 414, 34 N. E. 521. North Carolina agrees. We do not sit in judgment on the wisdom of that policy. We cannot say, however, that it is not an allowable one measured by constitutional standards."

See also *Gray* v. *Sanders*, 372 U. S. 368, 379 (1963); *Camacho* v. *Rogers*, 199 F. Supp. 155 (S.D.N.Y., 1961); *Camacho* v. *Doe*, 31 Misc. 2d 692 (Bronx Co., 1958), aff'd 7 N. Y. 2d 762 (1959).

Thus, the constitutionality of a literacy test, given in English, would appear to be no longer open to question. Not only has this Court approved a test in English, but there would be little point to a literacy test if it were not given in English since the validity of such a test in this country is based on the fact that the greater part of written materials and of all other communication media are in English. *Camacho* v. *Rogers*, 199 F. Supp. 155, 159 (S.D.N.Y. 1961). In that case the three-judge court held:

> "It is not unreasonable to expect a voter not only to be conversant with the issues presented for determination in choosing between candidates for election, but also to understand the language used in connection with voting. For example, there are presented in English on the ballot synopses of proposed constitutional amendments, titles of offices to be filled and directives as to the use of the paper ballot or voting machine. Finally, what is more proper than that the voter be literate in the language used to conduct the business of government in his state" (*Id.*).

Indeed, Congress has recognized the relationship between effective citizenship and English literacy and has made such literacy a prerequisite for naturalization (8 U.S.C. § 1423).

The New York literacy test is simple and objective. *Lassiter* v. *Northampton County Board of Elections*, *supra* at 52n.7; McGovney, The American Suffrage Medley (1949) pp. 62-64; 31 *Notre Dame Lawyer* 257-58 (1956). It is administered "without regard to race, creed, color or sex. No charge is made that the test is improperly given or its contents unfair" (*Camacho* v. *Rogers*, *supra* at 159). A sample literacy test is annexed as an exhibit to the *amicus*

curiae brief of the United States in *Camacho* v. *Rogers*, a copy of which is appended hereto. The literacy test is Appendix C to that brief. In view of the simplicity of the test and impartiality with which it is administered, appellant's depiction of herself as a member of a group which is the victim of discrimination is unfounded. No discrimination was intended by the test. Indeed, in 1920 the total number of persons of Puerto Rican origin in New York State was 7719 of whom 7364 resided in New York City (Appendix B to appendix herein). The total population of the State was 10,385,227 (*World Almanac* [1965] p. 285). The literacy requirement clearly was not aimed at the numerically few persons of Puerto Rican origin living in New York. Neither the Fourteenth nor the Fifteenth Amendment to the Constitution is violated by the English literacy requirement. *Lassiter* v. *Northampton County Board of Elections*, *supra* at 51-53; *Camacho* v. *Rogers*, *supra* at 160.

B.

Appellant's attempts to assign unconstitutionality either to the statute or to its application to her are, without exception, frivolous. For example, the characterization of the literacy requirement as a "grandfather clause" (*Guinn* v. *United States*, 238 U. S. 347 [1915]) because it applies only to persons who became eligible to vote after January 1, 1922, overlooks the fact that the New York statute omits one crucial element, *viz.*, a grandfather. The defective statute in *Guinn*, which took effect in 1906, exempted from the literacy requirement not only those entitled to vote prior to January 1, 1866 (the date of the first Civil Rights Law) but also their lineal descendants. The clear intent and operation of the statute there were to prevent Negroes from voting. By contrast, the New York literacy requirements applies only to those individuals eligible to vote after its effective date, the point of beginning. *Sperry & Hutchinson* v. *Rhodes*, 220 U. S. 502, 505 (1911). The statute did not abrogate any right possessed by any citizen qualified to vote prior to the effec-

tive date of the statute. *Ferayoni* v. *Walter*, 121 Misc. 602, 202 N. Y. Supp. 91 (Sup. Ct., Queens Co. 1923); *Schostag* v. *Cater*, 151 Cal. 600, 91 Pac. 502 (1907). Indeed, the federal law requiring literacy for naturalization does not apply to persons who, on the effective date of the statute, were over fifty years of age and had resided in the United States for periods totalling at least twenty years. 8 U.S.C. 1423. See also 8 U.S.C. § 1430.

Nor does the fact that New York extends the privilege of absentee registration without regard to race, creed or other classification to inmates and residents of veterans' hospitals whether they be veterans or their spouses, parents and children invalidate the English literacy requirement. As indicated *supra*, pp. 5-6, the literacy requirement is not abolished for such persons except to the extent of any physical disability. Only the nature of the evidence establishing literacy is different in such cases as befits the difference in circumstances. Not every difference in treatment violates the Fourteenth Amendment. *McGowan* v. *Maryland*, 366 U. S. 420, 425-26 (1960). The legislature is presumed to have investigated the relevant facts behind the distinction (*McGowan* v. *Maryland*, *supra*; *Bucho Holding Co.* v. *State Rent Comm'n*, 11 N. Y. 2d 469, 477 [1962]; *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 78-79 [1911]), and their determination "will not be set aside if any state of facts reasonably may be conceived to justify it." *McGowan* v. *Maryland*, *supra* at 426. Certain differentiations between veterans and civilians have long been deemed proper. See, *e.g.*, 5 U.S.C. §§ 851 ff (preferences to veterans in Government employment); 8 U.S.C. §§ 1439, 1440 (naturalization through service in the armed forces). It is an undeniable fact that Puerto Ricans serve and have served in the armed forces and thus many are "veterans" or "veteran inmates of veteran hospitals" who may be thus differentiated.

The argument that advances in electronic communications have obviated the need for any literacy test is hardly

relevant to the instant case. The *Lassiter* case is very recent and its holding must implicitly reject such an argument. Moreover, the greater part of such communication is in English. While comprehension of the spoken word does not necessarily imply comprehension of the written word, it is more often true that a person who can read and write a language can understand it when spoken. Thus a literacy test is of value even in face of modern technology. Moreover, appellant does not allege that she understands oral English.

Appellant's allegation based on the "privileges and immunities" clause, that she is entitled to vote solely by virtue of her citizenship has no merit. This Court has long and consistently held that the fact of citizenship does not, as a federal constitutional matter, automatically confer the right of suffrage. *Lassiter* v. *Northampton County Board of Elections, supra; Breedlove* v. *Suttles,* 302 U. S. 272 (1937); *Minor* v. *Happersett,* 88 U. S. [21 Wall. 316 2d (1875)]. Nor does the fact that appellant was eligible to vote in Puerto Rico automatically make her eligible to vote in New York (*Drueding* v. *Devlin,* 234 F. Supp. 721 (D. Md. 1964), *aff'd* 380 U. S. 125 [1965]), since each state may set its own voter qualifications. U. S. Const. Art. I, § 2.

Reliance on the Treaty of Paris of 1898 providing that Congress is to determine the status of inhabitants of Puerto Rico and on the Jones Act of 1917 and subsequent Acts of Congress giving Puerto Ricans full citizenship avails appellant nothing. Her citizenship is not disputed. The fact of citizenship however does not, as we have said, give her an automatic franchise anywhere in the country. Nor does the Constitution of Puerto Rico effect such a result, a result which would be utterly at variance with the federal Constitution. The Court in *Camacho, supra,* declared (199 F. Supp. at 158):

> "We think it is clear that this provision [in the Treaty of Paris] applies only to the rights of persons born

and *resident of* Puerto Rico, and that they are not given rights which they are entitled to exercise in contravention of the valid laws of a state to which they may move from Puerto Rico. They do not acquire a special status which would give them preferential treatment over a resident of a sister state who moves to New York and seeks to vote from her new residence." (Emphasis supplied.)

Finally, invocation of Article 55 of the United Nations Charter is unavailing. That article is not self executing and is not relevant here (*Camacho* v. *Rogers, supra* at 158; see also *Sei Fujii* v. *State,* 242 F. 2d 617 [Cal. 1952]), even assuming that a simple literacy test fairly administered and reasonably related to intelligent implementation of the democratic process is that sort of practice envisioned by the Charter.

C.

Subsequent to the decision of the New York Court of Appeals in the instant case, Congress passed the Voting Rights Act of 1965. Section 4(e) of that Act provides:

"(e)(1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant class-room language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

(2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant class-room language was other than English,

> shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English."

Section 4(e) has been and is in full force and effect in New York City according to an affidavit of appellee Thomas Mallee, Commissioner of the Board of Elections of the City of New York. This affidavit was prepared in connection with the case of *Morgan* v. *Katzenbach*, presently pending in the District Court for the District of Columbia (Civil No. 1915-65).

Appellant does not allege that she has completed six grades of an accredited Spanish-language school in Puerto Rico. However, she does allege that she has attended schools in Puerto Rico and that she is literate in Spanish. In view of the present applicability of Section 4(e) of the Voting Rights Act of 1965 to New York City, the instant appeal may well be moot. United States Constitution, Article III. It should be noted that the constitutionality of Section 4(e) is presently being tested in two pending actions: *Morgan* v. *Katzenbach, supra* and *United States* v. *County Board of Election of Monroe County*, W.D.N.Y. Civ. No. 11, 590. In the latter case the intervenor-appellee herein is intervenor-defendant. However, if, as would appear probable from the nature of appellant's allegations, she did in fact attend a Puerto Rican Spanish-language school for six grades, she could have registered and voted in New York City in the 1965 general election, as did thousands similarly situated.

CONCLUSION

Inasmuch as the appeal presents no substantial constitutional question, appellee respectfully prays that the judgment of the New York Court of Appeals be affirmed or that the appeal be dismissed.

Dated: New York, New York, November 12, 1965.

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Intervenor-Appellee, Pro Se

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

GEORGE C. MANTZOROS
BARRY J. LIPSON
Assistant Attorneys General

BRENDA SOLOFF
Deputy Assistant Attorney General,
of Counsel

APPENDIX A

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

60 Civ. 3531

In the Matter of the Application of

JOSE CAMACHO,

Plaintiff,

v.

NELSON ROCKEFELLER, *et al.*,

Defendants.

BRIEF FOR THE UNITED STATES AMICUS CURIAE

This brief is submitted by the Government to advise the Court concerning the applicability of the Civil Rights Act of 1957 and 1960 to the instant case.

HISTORY OF THE CASE

Plaintiff, a Spanish speaking citizen, born in Puerto Rico and residing in New York City, sought an order from the New York State Supreme Court compelling the election officials in his district to allow him to take a literacy test in the Spanish language, and to register and vote on election day. It was his contention that the New York literacy requirements for voting[1] violated the Four-

[1] The New York Statutes are reproduced in pertinent part in Appendix A.

teenth and Fifteenth Amendments to the United States Constitution, the Treaty of Paris of 1898, the Charter of the United Nations and certain acts of Congress.

The New York Statutes require that applicants for registration be able to read and write English. New York Const. Art. 2, § 1; N. Y. Election Law §§ 150, 162. Literacy in English is conclusively presumed if the applicant produces a certificate of literacy issued by the Board of Regents, a certificate showing that he has completed the work of an approved eighth grade or higher school in which English is the language of instruction or a certificate of honorable discharge where he was a resident of New York when he joined the armed forces. N. Y. Election Law § 168.

The New York Supreme Court, Special Term upheld the constitutionality of the election law and denied the petition. Comacho v. Doe, 140 N.Y.L.J. No. 74, p. 13 (1958). This order was affirmed without opinion by the New York Court of Appeals. 7 N. Y. 2d 762 (1959).[2] In September, 1960, plaintiff filed suit in this Court requesting both an injunction against various state officials from enforcing the literacy requirement and an order requiring the Attorney General of the United States to take action pursuant to the 1957 Civil Rights Act as amended to allow plaintiff to register to vote. Plaintiff also moved for an order convoking a Three-Judge Court. On October 6, 1960, this Court granted the Attorney General's cross motion to dismiss the complaint insofar as it related to him on the ground that the Court lacked jurisdiction over his person. On June 1, 1961, this Court

---

[2] Plaintiff did not, as was his right, take an appeal from this decision to the United States Supreme Court (see 28 U.S.C. § 1257(2)), but seeks, instead, to litigate the same issue in this Court.

granted an order for a hearing by a Three-Judge District Court. The remaining defendants have moved to dismiss the complaint.

ARGUMENT

A. Introductory

The gravamen of the complaint is that plaintiff has been denied the right to vote by operation of the New York literacy requirements and that the New York Statutes contravene the Constitution and the laws of the United States, including the Civil Rights Acts of 1957 and 1960. Plaintiff's attack is leveled at the face of the New York Statute. There is no allegation that the New York law has been administered in an unconstitutional manner or that election officials have been arbitrary or unreasonable in applying the statutory mandate. Nor is it contended that the literacy test is required of certain racial groups but not of others. The sole claim is that it is unreasonable and hence unconstitutional and illegal for the State of New York to deny the vote to one, such as this plaintiff, who is literate in Spanish but is not literate in the English language.

Under our constitutional system, the States have the power to establish standards for the exercise of the franchise. Article I, Section 2 of the Constitution; *Pope* v. *Williams*, 193 U. S. 621 (1904); *McPherson* v. *Blacker*, 146 U. S. 1 (1892). Under the Fourteenth and Fifteenth Amendments, these standards must be reasonable and nondiscriminatory, particularly with respect to race and color. State standards are also invalid if they contravene any restriction imposed by Congress acting pursuant to its constitutional powers.

Appendix A.

42 U.S.C. 1971(a),[3] which was first enacted in 1870, and then reenacted as part of the Civil Rights Act of 1957, provides:

> (a) All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any state, territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any state or territory, or by or under its authority, to the contrary notwithstanding.

That statute prohibits not only state voting requirements which expressly disfranchise racial groups but it also reaches state requirements and practices which accomplish this result by indirection. *Lane* v. *Wilson*, 307 U. S. 268 (1939). Assuming that Puerto Ricans constitute a race or color within the meaning of Section 1971, the issue here is whether the New York Statute makes a distinction between them and other citizens of the State of New York.

B. Literacy Tests Are Valid

In view of the recent decision of the Supreme Court in *Lassiter* v. *Northampton Election Board*, 360 U. S. 45

[3] Plaintiff relies generally upon the "Civil Rights Act of 1957 as amended" and asserts that a "practice or pattern" of discrimination exists. Title VI of the Civil Rights Act of 1960 (74 Stat. 90) does refer to a pattern or practice of discrimination but only in the context of what remedy is available for violations of the 1957 Act. The 1960 statute does not create causes of action. Likewise, the new features of the 1957 statute are concerned solely with remedies. They establish a remedy available to the Attorney General, not to private parties. As indicated, *supra*, however, Section 1971(a) of Title 42, which was reenacted in 1957, does create a right which may be vindicated not only by the United States, but also by a private plaintiff.

(1959), it can no longer be contended that a state may not constitutionally require literacy as a prerequisite to the exercise of the franchise. In that case, a Negro citizen of North Carolina sued to void that State's requirement that "Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language." The Court, after reviewing the history and scope of literacy requirements in the American States, addressed itself squarely to the issue of the reasonableness of such requirements in relation to the State's power to determine the qualifications of its voters. Said the Court (360 U. S. at 51-53):

> The ability to read and write likewise has some relation to standards designed to promote intelligent use of the ballot. Literacy and illiteracy are neutral on race, creed, color, and sex, as reports around the world show. Literacy and intelligence are obviously not synonymous. Illiterate people may be intelligent voters. Yet in our society where newspapers, periodicals, books, and other printed matter canvass and debate campaign issues, a State might conclude that only those who are literate should exercise the franchise. . . . It was said last century in Massachusetts that a literacy test was designed to insure an 'independent and intelligent' exercise of the right of suffrage. . . . North Carolina agrees. We do not sit in judgment on the wisdom of that policy. We cannot say, however, that it is not an allowable one measured by constitutional standards.

Thus, whatever question there might have been prior to 1959 concerning the validity of literacy requirements, it was laid at rest by *Lassiter*. This Court is bound by the *Lassiter* decision.

Appendix A.

C. English Literacy

But plaintiff contends that, whatever may be the rule with respect to literacy generally, it is unreasonably discriminatory to require literacy to be restricted to proficiency in the English language. In his view, the objectives of a literacy requirement would be satisfied by literacy in any language, or, at a minimum, by literacy in a language, such as Spanish, which is spoken and read by thousands of persons in the State of New York.

First, it would seem that this issue, too, is foreclosed by *Lassiter*. As indicated above, the North Carolina statute which was involved in the *Lassiter* case required literacy in the English language. As the Court's discussion of the literacy tests of other states shows, it was well aware of the difference between the New York Statute and those of other states in that regard.[4] While the Court did not specifically discuss the English language requirement of the North Carolina test, it did approve that test and did not in any way cast doubt or express reservations upon the exclusion, by North Carolina, of literates in other tongues.

Second, in any event, it cannot be said that the New York requirement which distinguishes between English and non-English speaking people is so unreasonable as to contravene the Constitution and the Civil Rights Act of 1957.

---

[4] The Court referred specifically to the fact that two states (including New York) require that the voter be able to read and write English. 360 U. S. at 52, note 7. The Court also mentions a Louisiana requirement that to qualify, the applicant has to read and write "English or his mother tongue;" a Washington requirement that the voter be able to read and speak the "English language;" and more general requirements in other states which do not insist upon literacy in English.

Appendix A.

One reasonable method for insuring an informed electorate is a country where English is, by far the dominant language, is to require that voters be able to read and write English. An informed electorate must have access to the myriad of conflicting viewpoints which contribute to the making of political decisions. In a country and state where the predominant and official language is English, it is reasonable to suppose that these views are more fully accessible to those who understand the English language.

To be sure, Spanish language newspapers are published in New York City and are available to residents of the City and environs, but, at best, one wholly dependent upon such sources, however excellent they may be, is denied access to the great and varied body of the American press. In addition, the Court in considering this case must view the State of New York as a whole. Large areas of the State are not served by Spanish-language newspapers. Residents of these areas who are literate only in Spanish do not have available sufficient sources of information to permit them to qualify as informed electors.

This case does not involve an interplay between discrimination in educational opportunity on the one hand and a literacy test as a prerequisite to voting on the other, for in New York educational facilities of very great scope and variety are available to all citizens, regardless of race or color. Nor does it involve a tightening of literacy standards after one racial group has achieved electoral dominance. Either of these situations may well call for elimination of the literacy requirements as unreasonable and discriminatory. Here, we are dealing with a statutory provision having no racial basis.

It must be remembered that this Court is not called upon to pass judgment upon the wisdom of the statute which is here at issue. It may well be that it is more desirable,

in a political democracy, that the franchise be available to as large a proportion of the population as possible, and that those Puerto-Rican-Americans, who are unable to read English, should not be disfranchised on that account. But those considerations are for the legislature and the people of New York. Under *Lassiter*, the Court's task is at an end when it has determined that, within the range of discretion available to it, the legislature of the state has made a choice which is not constitutionally unreasonable. Under the complaint here, there is no showing of an unconstitutional choice.

D. Purpose and Application

No matter what might be the reasonableness of the statute on its face, if its purpose is to discriminate on account of race (*Davis* v. *Schnell*, 81 F. Supp. 872 (M. D. Ala. 1949), affirmed, 336 U. S. 933) or if it is administered in a discriminatory manner, it cannot stand.

The New York literacy requirement was enacted in 1922. At that time there were only 7,719 Puerto Rican-born citizens in New York (see Appendix B) compared with 191,305 in 1950 and an estimated 618,000 in 1959. See Report of the United States Commission on Civil Rights 1959, p. 67. The literacy requirement clearly was not aimed at Puerto Rican-Americans.

Plaintiff does not allege that the statute is administered in an arbitrary or discriminatory manner. In fact, New York provides as objective a method of testing literacy as has yet been devised. Anyone with an eighth grade certificate from a school in which English is the language of instruction or who has an honorable discharge where he was a resident of New York when he joined the service is automatically qualified. Others are given tests, not by election officials, but by the Board of Regents whose

certificate is binding upon the election inspectors. New York Election Law § 168.

The operation of the New York literacy requirement has been authoritatively described as follows:[5]

> New York is the only state in the Union that both has a reasonable reading requirement and administers it in a manner that secures uniformity of application throughout the State and precludes discrimination, so far as is humanly possible.
>
> • • • • • •
>
> The examination is based upon prose compositions of about ten lines each, prepared by the personnel of the State Department of Education, designed to be of the level of reading in the sixth grade, on topics of civics, history, geography, natural science or biography.[6] These are uniform for any single examination throughout the State. The examination is given by school authorities and graded by school superintendents or teachers under careful instructions from the central authority, to secure uniformity of grading as nearly as is possible. On a form handed a person taking the examination the eight to ten line composition is printed, followed by eight questions, with blanks for answers. The questions call for short answers which can easily be given by anyone able to read the composition understandably. No additional information is necessary. There is no insistence upon good English in the answers, errors of spelling and of grammar being overlooked.
>
> • • • • • •

---

[5] McGovney, The American Suffrage Medley (1949) 62-64.

[6] Attachment C is a sample literacy test represented by McGovney as being one of the tests in use in 1943. McGovney, *supra*, p. 65.

Appendix A.

[These literacy certificates] are issued by school authorities and must be accepted without question by registrars of voters. Thus, the possibility of discrimination by registrars, who usually are petty officeholders or their deputies, is avoided. In this, as well as other respects, the New York system differs from that of any other literacy-test state.

Dated: New York, N. Y., June 12, 1961.

Respectfully submitted,

BURKE MARSHALL
Assistant Attorney General

ROBERT M. MORGENTHAU
United States Attorney

Attorneys for United States
of America.

APPENDIX A TO A

NEW YORK ELECTION LAWS

N. Y. Const. Art. 2 § 1

N. Y. Election Law, § 150 N. Y. Election Law, § 168 omitted.

APPENDIX B TO A

1950 United States Census of Population

Special Report P-E No. 30

"Puerto Ricans in Continental United States"

Table A.—PUERTO RICANS IN CONTINENTAL UNITED STATES, NEW YORK STATE, AND NEW YORK CITY: 1910 TO 1950

(Statistics for 1950 based on 20-percent sample)

Census year and generation	Continental United States		New York State		New York City	
	Number	Percent of increase	Number	Percent of total	Number	Percent of total
Puerto Rican birth:						
1950	226,110	223.2	191,305	84.6	187,420	82.9
1940	69,967	32.6	63,281	90.4	61,463	87.8
1930	52,774	346.8	45,973	87.1	[2]	...
1920	11,811	680.6	7,719	65.4	7,364	62.4
1910	1,513	...	641	42.4	554	36.6
Puerto Rican parentage:[1]						
1950	75,265	...	[2]	...	58,460	77.7

[1] Born in continental United States.

[2] Not available.

APPENDIX C TO A

1943—Test 1

NEW YORK STATE REGENTS LITERACY TEST
(To be filled in by the candidate in ink)

Write your name here .....
First name Middle initial Last name

Write your address here .....

Write the date here .....
Month Day Year

Read this and then write the answers to the questions
Read it as many times as you need to

The legislative branch of the National Government is called the Congress of the United States. Congress makes the laws of the Nation. Congress is composed of two houses. The upper house is called the Senate and its members are called Senators. There are 96 Senators in the upper house, two from each State. Each United States Senator is elected for a term of six years. The lower house of Congress is known as the House of Representatives. The number of Representatives from each state is determined by the population of that state. At present there are 435 members of the House of Representatives. Each Representative is elected for a term of two years. Congress meets in the Capitol at Washington.

Appendix C to A.

The answers to the following questions are to be taken from the above paragraph

1 **How many houses are there in Congress?** .....

2 **What does Congress do?** .....

3 **What is the lower house of Congress called?** .....

4 **How many members are there in the lower house?** ....

5 **How long is the term of office of a United States Senator?** .....

6 **How many Senators are there from each state?** .....

7 **For how long a period are members of the House of Representatives elected?** .....

8 **In what city does Congress meet?** .....